

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT

OF WEST VIRGINIA

\* \* \* \* \*

SCOTT T. BALLOCK,

\*

Plaintiff

\*

Case No.

vs.

\*

1:17-CV-52

ELLEN RUTH COSTLOW,

\*

STATE TROOPER MICHAEL

\*

KIEF, STATE TROOPER

\*

RONNIE M. GASKINS,

\*

STATE TROOPER CHRIS

\*

BERRY,

\*

Defendants

\*

\* \* \* \* \*

DEPOSITION OF

MICHAEL KIEF

May 28, 2019

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ATTORNEY CROOKS: We can go back on the record.

BY ATTORNEY CROOKS:

Q. Okay.

Just before we took our short break, we were talking about a timeframe that we'll probably be able to pin down more precisely by reference to the voluminous document productions that have been made.

But doing the best we can from memory, it sounds like you --- you heard from Tom Ballock, Senior by his way of calling --- asking for the person in charge at the barracks. Got you. He complained about Chris Berry.

And then you got in touch with Trooper Berry, talked to him. He denied the relationship with Ellen Ruth Costlow. You looked at his cell phone. Can't remember exactly what you found, but you're confident that you certainly didn't find anything that prompted you to act further on that particular inquiry.

Have I summed all that up correctly?

A. Correct. Yes, sir.

Q. Okay.

Did you do anything else at that point to investigate Tom Ballock, Senior's complaint about Trooper

1 Berry?

2 A. Yes, sir.

3 Q. What did you do?

4 A. Called Ms. Costlow.

5 Q. All right.

6 How'd you --- how'd you know how to get in  
7 touch with her? Did Tom Ballock give you that  
8 information, or ---?

9 A. I don't remember how I found that out. No,  
10 sir, I don't remember that.

11 Q. Didn't get it off Trooper Berry's phone, did  
12 you?

13 A. I doubt that, sir. I don't remember how I got  
14 her --- her phone information.

15 Q. Okay.

16 Well, you can't say for sure that there wasn't  
17 communication between Trooper Berry and Ellen Costlow, so  
18 it's possible you did get it from his phone?

19 A. Again, I don't know, sir.

20 Q. All right.

21 So tell me about this. Did you go to see her?  
22 Did she come to see you? Did you just talk over the  
23 phone? How did this go down?

24 A. I --- I called her on the phone, had a

1 conversation with her on the phone.

2 Q. Okay.

3 Walk me through what you remember about that.

4 A. I told her why I was calling. She --- she got  
5 upset and denied any affair with Trooper Berry. And she  
6 made the comment --- a comment about --- and I don't know  
7 exactly word for word, but she made the comment she was  
8 being harassed.

9 Q. By whom?

10 A. I don't believe she even said that, sir. I  
11 don't remember the whole gist of the conversation. Being  
12 wronged, though.

13 She asked if she could come into the state  
14 police barracks to talk to me. I said, well, sure if you  
15 have a complaint you would like to make or --- or talk to  
16 me, that's fine. So she came in.

17 Q. Have you told me everything you can recall  
18 about your first telephone discussion with her?

19 A. No, sir. That's about the --- the vague ---  
20 the vague memory I have of it.

21 Q. Did you make notes of your conversation with  
22 Tom Ballock, Senior, your discussion with Trooper Berry,  
23 and your phone call with Ellen Ruth Costlow?

24 A. I believe I jotted a few things down talking to

1 Gaskins of the Morgantown Detachment.

2 Q. Okay.

3 And who's it from?

4 A. Captain Merrill.

5 Q. Okay.

6 And what was Captain Merrill instructing  
7 Corporal --- then Corporal Gaskins?

8 A. To open up an investigation.

9 Q. So the fair implication here is that Exhibit 4  
10 occurred because it was instigated by Exhibit 3? In  
11 other words, you asked Captain Merrill for authority and  
12 he granted it. And he personally directed Corporal  
13 Gaskins to open the investigation?

14 A. Correct.

15 Q. All right.

16 And the reason this echelon of authority at the  
17 state police was directly involved here is because there  
18 was an FBI agent at issue.

19 True?

20 A. Yes, sir.

21 Q. Did you make any contact with the FBI in the  
22 course of your investigating?

23 A. During the course of the whole ---?

24 Q. Prior to the time that my client was arrested

1 on September 13th, 2013, did you contact the FBI?

2 A. I --- I do not know, sir. I cannot remember  
3 who contacted the FBI.

4 Q. All right.

5 I take it by your answer that you're satisfied  
6 that there was somebody at the state police who contacted  
7 the FBI about Scott Ballock prior to his arrest on  
8 September 13, 2013?

9 A. Correct.

10 Q. What was the point of that contact?

11 A. Twofold, to let the agency that he was hired  
12 under know that there was a criminal investigation being  
13 conducted, and two, professional courtesy.

14 Q. Did you direct someone to make that contact?

15 A. I do not remember that, sir.

16 Q. Would corporal Gaskins have had the authority  
17 to contact the FBI for the two purposes that you just  
18 identified?

19 A. Yes, sir.

20 Q. Okay.

21 Who was in charge of the investigation,  
22 Corporal Gaskins?

23 A. He was the investigating officer, sir.

24 Q. Okay.